Pentadbir Pejabat Daerah dan Tanah Petaling v SEA Housing Corp Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01(NCVC)(A)-224–04 OF 2023
MOHD NAZLAN, AZIMAH OMAR AND FAIZAH JAMALUDIN JJCA
11 AUGUST 2025

Land Law — Forfeiture — Validity of — Failure to pay quit rent — Admission by appellant that issuance of title for subject land was a 'mistake' as subject land did not exist — Respondent advised to ignore 6A Notice issued under s 97 of National Land Code ('NLC') — Discovery of actual existence of subject land — Appellant forfeited subject land without knowledge of respondent due to failure of respondent to comply with 6A Notice — Whether appellant unlawfully forfeited subject land — whether appellant's exercise to forfeit subject land an unlawful backdoor attempt to compulsorily acquire subject land — Whether provisions in NLC, Land Acquisition Act 1960 and Federal Constitution contravened

The appeal was an appeal against the decision of the High Court judge's ('HCJ') allowing the respondent's originating summons ('OS') seeking for various declaratory reliefs and consequential orders in respect of the decision of the appellant, the *Pentadbir Pejabat Daerah dan Tanah Petaling* ('PTG') which had unlawfully forfeited the respondent's proprietorship over a large piece of land. This large plot of land was then subdivided into ten individual plots of land held under separate registered grants and lot numbers. Circa 1980s, the respondent ('plaintiff') developed and constructed the SEA Park Apartments atop six out of the ten subdivided lots. The remainder four vacant lots surrounding the SEA Park Apartments (inclusive of Lot 8383) were later sold to one Yap Say Tee. Nevertheless, for a vast majority of time, the plaintiff was led to believe that the subdivision of the large plot of land was confined to the ten subdivided plots (in which the individual titles were issued and handed over to the plaintiff). Unbeknownst to the plaintiff, the large plot of land was in fact subdivided into 12 plots of land with the last plot of land being held under HSD 154296 Lot 8914 ('the subject land'). The title to the subject land had never been issued or handed over to the plaintiff by the PTG and the plaintiff only knew of the existence of the subject land when it received the PTG's Statutory Notice for Claim for Rent Arrears for 'unpaid rent' of the subject land ('6A Notice') (issued under s 97 of the National Land Code ('the NLC'). The plaintiff then promptly went to the PTG's office and obtained a certified true copy of the title to the subject land (as the original IDT was never handed over to the plaintiff). The receipt of the copy of the title sparked the first bit of confusion over the subject land. Upon reference to the PTG's Technical

Division, the PTG's officer then examined both the Pelan Tanah alongside other technical drawings of Lot 8914. This subject report added legitimacy to the mistaken belief that the subject land (8914) did not exist and was overlapping Lot 8383 when the drawing within the subject report outright bold and labelled the exact same lot 8383 to be Lot 8914, which was the subject land, instead. It was due to this consistent 'error' by the PTG's marking and recording of the plaintiff's landholding that the PTG thereby advised the plaintiff that: (a) the issuance of title for the subject land was a 'mistake' as the subject land in actuality overlapped with Lot 8383 which had already been alienated to the plaintiff (and later sold to Yap Say Tee); and (b) to ignore the 6A Notice as the subject land supposedly 'never existed' from the outset. Considering the advice by the PTG's Technical Division, the title, and the subject report upon the subject land, it was only right for the plaintiff to ignore the 6A Notice and not accede to the claim for rent arrears for the subject land. Two years since the advice by the technical division, the plaintiff was then left shocked when circa 2018, the plaintiff discovered that the subject land in actuality did exist and that the PTG had unlawfully and unbeknownst to the plaintiff forfeited the subject land on the grounds of the plaintiff's failure to comply with the 6A Notice. The issue that arose for determination was whether the HCJ was correct to find that the entirety of the PTG's exercise to forfeit the plaintiff's subject land was an unlawful backdoor attempt to compulsorily acquire the plaintiff's subject land in clear contravention of the NLC, the Land Acquisition Act 1960 and the Federal Constitution.

Held, dismissing the appeal:

(1) Even the PTG had duly complied with all of the procedural requirements to appropriately serve the 6A Notice to the plaintiff, the proper service of the 6A Notice did nothing to negate the PTG's admitted errors and mistake as well as misrepresentation as to the alleged non-existence of the subject land. It would be gravely unjust strictly enforce the time stipulated under the 6A Notice when the PTG itself had advised against the very existence of the subject land itself, what more the 'arrears' claimed under the 6A Notice. Thus, the merit of this case first hung on the substantive issue of the PTG's admitted mistake and error well before any procedural issue even become remotely relevant (see paras 37–38).

(2) The forfeiture of landholding was a serious quasi-criminal matter as it could adversely affect one's fundamental right to property entrenched under art 13(1) of the Federal Constitution. Therefore, it was also incumbent upon the PTG to prove that the exercise of its authority to forfeit the subject land had been reasonably exercised. On the facts of the case, the PTG had failed in safeguarding the plaintiff's constitutional rights, and the *Wednesbury* reasonableness test. As against the *Wednesbury* reasonable test, no reasonable person, having admitted to mistakenly recorded the plaintiff's landholding within the title (and mistakenly

advised the plaintiff to ignore the 6A Notice), would still insist on blaming the plaintiff's non-payment against the 6A Notice as grounds to unjustly forfeit the plaintiff's subject land. As against the plaintiff's constitutional right to hold property, the unreasonable manner in which the PTG had misled the plaintiff to mistakenly believe that the subject land was non-existent, and to ignore the 6A Notice had directly deprived the plaintiff of the opportunity to safeguard its landholding and comply with its payment obligations. Thus, having deprived of such opportunity would consequently deprive the plaintiff of its ownership over the subject land (see paras 39–40).

(3) The PTG's allegations was that the plaintiff already had prior knowledge of its proprietorship and still feigned ignorance against the 6A Notice and its payment obligations. However, on the contrary, the surrounding facts of this case was more indicative of the plaintiff 's genuine mistaken belief of the subject land's 'non-existence' owing to the confusing Pelan Tanah in the certified copy of the title and the PTG's Subject Report. There was no evidence proffered by the PTG that the plaintiff was in the habit of defaulting any of its payment obligations (save and except against the 6A Notice). Thus, it was infinitely more probable than not that the plaintiff would have paid all quit rent (or even rent arrears) had the plaintiff been advised by the PTG that the subject indeed did exist and that the plaintiff must pay the rent arrears so as to avoid the forfeiture of the subject land (see paras 41–42).

(4) The HCJ was correct to find that it was more probable than not that the plaintiff was genuinely unaware of the existence of the subject land and had only ignored the 6A Notice upon the PTG's representation that the subject land was non-existent on the account of an overlap with lot 8383. The PTG had never bothered to appropriately amend the Pelan Tanah within the title for the subject land to reflect the amendment or the correction made prior in 2014. Had the Pelan Tanah in the title be amended or the correction be endorsed upon the title itself, the entire confusion as to the existence of the subject land would have never arisen (see paras 43–44).

(5) The PTG's duty under s 380 of the NLC shall hold the registrar of the PTG to be liable to ensure that errors upon titles were appropriately rectified or corrected. Therefore, since the PTG had failed to appropriately carry out its duty to amend the Pelan Tanah within the title to Lot 8914, then the plaintiff ought not be held at fault for reasonably relying on the PTG's error and subsequent misrepresentation and erroneous advice to ignore the 6A Notice. The PTG was aware of the error and yet opted to not correct the known error. Worst still, the PTG

was hopeful that the error be kept under wraps and the plaintiff be kept unaware of the error until time would 'allow' the subsequent forfeiture of the subject land (see paras 46–47).

(6) The only the Government may acquire an already-alienated land for public purpose was via compulsory acquisition, specifically governed by the Land Acquisition Act 1960. Regardless of the PTG's true intent, the irrefutable fact remained that the PTG could not 'ride' on the PTG's mistake and error leading to the forfeiture of the subject land as backdoor means to acquire Lot 8914 for public purposes. Therefore, the entirety of the PTG's exercise to forfeit the plaintiff's subject land was an unlawful backdoor attempt to compulsorily acquire the plaintiff's subject land in clear contravention of the NLC, the Land Acquisition Act 1960 and the Federal Constitution (see paras 51–52).

[Bahasa Malaysia summary

Rayuan ini merupakan suatu rayuan terhadap keputusan hakim Mahkamah Tinggi ('HMT') yang telah membenarkan saman pemula ('SP') responden yang memohon pelbagai relif deklaratori dan perintah lanjutan berhubung keputusan perayu, iaitu Pentadbir Pejabat Daerah dan Tanah Petaling ('PTG') yang telah secara tidak sah melucuthak pemilikan responden terhadap sekeping tanah yang luas. Tanah yang luas ini kemudiannya telah dipecahbahagikan kepada sepuluh lot individu yang berasingan di bawah geran berdaftar dan nombor lot masing-masing. Sekitar tahun 1980-an, responden ('plaintif') telah membangunkan dan membina pangsapuri SEA Park Apartments di atas enam daripada sepuluh lot pecahbahagi tersebut. Empat lot kosong selebihnya di sekeliling SEA Park Apartments (termasuk Lot 8383) kemudiannya telah dijual kepada seorang bernama Yap Say Tee. Walau bagaimanapun, untuk sebahagian besar tempoh masa tersebut, plaintif telah mempercayai bahawa pecahbahagi tanah luas tersebut hanya terhad kepada sepuluh lot pecahbahagi (di mana hakmilik individu telah dikeluarkan dan diserahkan kepada plaintif). Tanpa pengetahuan plaintif, tanah luas tersebut sebenarnya telah dipecahbahagi kepada 12 lot tanah dengan lot terakhir dipegang di bawah HSD 154296 Lot 8914 ('tanah subjek'). Hakmilik bagi tanah subjek tidak pernah dikeluarkan atau diserahkan kepada plaintif oleh PTG, dan plaintif hanya mengetahui kewujudan tanah subjek apabila menerima Notis Tuntutan Tunggakan Sewa ('Notis 6A') yang dikeluarkan oleh PTG bagi 'sewa tertunggak' tanah subjek (dikeluarkan di bawah s 97 Kanun Tanah Negara ('KTN'). Plaintif kemudian dengan segera telah hadir ke pejabat PTG dan memperoleh satu salinan sah hakmilik tanah subjek (memandangkan hakmilik asal tidak pernah diserahkan kepada plaintif). Penerimaan salinan hakmilik tersebut telah mencetuskan kekeliruan pertama mengenai tanah subjek. Setelah dirujuk kepada Bahagian Teknikal PTG, pegawai PTG telah meneliti kedua-dua Pelan Tanah bersama pelan teknikal lain bagi Lot 8914. Laporan subjek tersebut menambah keyakinan kepada

kepercayaan yang tersilap bahawa tanah subjek (8914) tidak wujud dan bertindih dengan Lot 8383 apabila pelan dalam laporan tersebut secara jelas ditebal dan ditanda dengan lot 8383 sebagai Lot 8914, iaitu tanah subjek. Disebabkan oleh kesilapan berterusan oleh PTG dalam penandaan dan perekodan pegangan tanah plaintif tersebut, PTG kemudiannya menasihati plaintif bahawa: (a) pengeluaran hakmilik bagi tanah subjek adalah satu 'kesilapan' kerana tanah subjek sebenarnya bertindih dengan Lot 8383 yang telah pun diberimilik kepada plaintif (dan kemudiannya dijual kepada Yap Say Tee); dan (b) supaya mengabaikan Notis 6A kerana tanah subjek kononnya 'tidak pernah wujud' sejak asal. Dengan mengambilkira nasihat yang diberikan oleh Bahagian Teknikal PTG, hakmilik dan laporan subjek berhubung tanah subjek, ia adalah munasabah bagi plaintif untuk mengabaikan Notis 6A dan tidak mematuhi tuntutan tunggakan sewa bagi tanah subjek tersebut. Dua tahun selepas nasihat oleh Bahagian Teknikal, plaintif kemudiannya terkejut apabila sekitar tahun 2018, plaintif mendapati bahawa tanah subjek sebenarnya wujud dan bahawa PTG telah secara tidak sah serta tanpa pengetahuan plaintif melucuthak tanah subjek atas alasan plaintif gagal mematuhi Notis 6A. Isu yang timbul untuk ditentukan ialah sama ada HMT telah betul dalam mendapati bahawa keseluruhan tindakan PTG untuk melucuthak tanah subjek plaintif merupakan satu cubaan tidak sah secara 'pintu belakang' untuk memperoleh tanah subjek plaintif secara paksa yang jelas bertentangan dengan KTN, Akta Pengambilan Tanah 1960 dan Perlembagaan Persekutuan.

Diputuskan, menolak rayuan:

(1) Meskipun PTG telah mematuhi segala kehendak tatacara untuk menyampaikan Notis 6A kepada plaintif dengan sewajarnya, penyampaian Notis 6A tersebut tidak menafikan kesilapan, kekeliruan dan salah representasi yang diakui oleh PTG sendiri berhubung dakwaan ketidakwujudan tanah subjek. Ia adalah amat tidak adil untuk menguatkuasakan tempoh masa dalam Notis 6A secara ketat apabila PTG sendiri telah menasihati plaintif bahawa tanah subjek tersebut tidak wujud, apatah lagi mengenai 'tunggakan' yang dituntut di bawah Notis 6A itu. Oleh itu, merit kes ini tertumpu terlebih dahulu kepada isu substantif iaitu kesilapan dan kekeliruan yang diakui PTG, sebelum sebarang isu tatacara menjadi relevan (lihat perenggan 37–38).

(2) Pelucuthak pegangan tanah merupakan perkara serius bersifat kuasi-jenayah kerana ia boleh menjejaskan hak asasi seseorang terhadap harta yang dijamin di bawah perkara 13(1) Perlembagaan Persekutuan. Oleh itu, ia menjadi tanggungjawab PTG untuk membuktikan bahawa pelaksanaan kuasanya untuk melucuthak tanah subjek telah dijalankan secara munasabah. Berdasarkan fakta kes, PTG telah gagal melindungi hak perlembagaan plaintif dan juga ujian kewajaran *Wednesbury*. Menurut ujian kewajaran *Wednesbury*, tiada orang yang waras, setelah

mengakui kesilapan dalam perekodan pegangan tanah plaintif dan menasihati plaintif supaya mengabaikan Notis 6A, akan masih berkeras menyalahkan plaintif atas ketidakbayaran terhadap Notis 6A sebagai alasan untuk melucut hak tanah subjek secara tidak adil. Berkaitan hak perlembagaan plaintif untuk memegang harta, cara tidak munasabah PTG yang telah mengelirukan plaintif sehingga mempercayai bahawa tanah subjek tidak wujud dan menasihatkan supaya mengabaikan Notis 6A secara langsung telah menafikan peluang plaintif untuk melindungi pegangan tanahnya dan memenuhi kewajipan pembayaran. Oleh itu, kehilangan peluang tersebut telah membawa kepada kehilangan pemilikan plaintif terhadap tanah subjek (lihat perenggan 39–40).

(3) Dakwaan PTG ialah bahawa plaintif telah pun mengetahui pemilikannya dan sengaja berpura-pura tidak tahu terhadap Notis 6A serta kewajipan pembayarannya. Namun sebaliknya, fakta sekitar kes ini lebih menunjukkan bahawa plaintif benar-benar berpegang kepada kepercayaan tersilap bahawa tanah subjek 'tidak wujud' disebabkan oleh kekeliruan dalam Pelan Tanah pada salinan hakmilik dan Laporan Subjek PTG. Tiada keterangan dikemukakan oleh PTG bahawa plaintif lazimnya gagal menunaikan kewajipan pembayarannya (kecuali terhadap Notis 6A). Maka, adalah lebih berkemungkinan bahawa plaintif akan membayar semua cukai tanah (atau tunggakan sewa) sekiranya plaintif telah dinasihatkan oleh PTG bahawa tanah subjek sememangnya wujud dan plaintif mesti menjelaskan tunggakan sewa tersebut bagi mengelakkan lucuthak tanah subjek (lihat perenggan 41–42).

(4) HMT adalah betul dalam mendapati bahawa adalah lebih berkemungkinan plaintif benar-benar tidak menyedari kewujudan tanah subjek dan hanya mengabaikan Notis 6A berasaskan representasi PTG bahawa tanah subjek tidak wujud kerana pertindihan dengan Lot 8383. PTG tidak pernah mengambil langkah sewajarnya untuk meminda Pelan Tanah dalam hakmilik tanah subjek bagi mencerminkan pindaan atau pembetulan yang telah dibuat pada tahun 2014. Sekiranya Pelan Tanah tersebut telah dipinda atau pembetulan disahkan pada hakmilik itu sendiri, kekeliruan mengenai kewujudan tanah subjek tidak akan timbul (lihat perenggan 43–44).

(5) Kewajipan PTG di bawah seksyen 380 KTN meletakkan tanggungjawab kepada pendaftar PTG untuk memastikan bahawa sebarang kesilapan pada hakmilik diperbetulkan dengan sewajarnya. Oleh itu, memandangkan PTG gagal melaksanakan tanggungjawabnya untuk meminda Pelan Tanah dalam Hakmilik Lot 8914, maka plaintif tidak wajar dipersalahkan kerana bergantung secara munasabah kepada kesilapan PTG serta representasi dan nasihat yang salah untuk mengabaikan Notis 6A. PTG telah sedar akan kesilapan tersebut namun

memilih untuk tidak membetulkannya. Lebih teruk lagi, PTG berharap kesilapan itu tidak diketahui dan plaintif kekal tidak sedar mengenainya sehingga tiba masa yang 'sesuai' bagi melaksanakan lucut hak ke atas tanah subjek (lihat perenggan 46–47).

(6) Hanya Kerajaan yang boleh memperoleh tanah yang telah diberimilik bagi tujuan awam melalui pengambilan wajib yang diperuntukkan secara khusus di bawah Akta Pengambilan Tanah 1960. Tanpa mengira niat sebenar PTG, hakikat yang tidak dapat dinafikan ialah PTG tidak boleh menggunakan kesilapan dan kekeliruan sendiri sebagai jalan 'pintu belakang' untuk memperoleh Lot 8914 bagi tujuan awam melalui proses lucuthak. Oleh itu, keseluruhan tindakan PTG untuk melucuthak tanah subjek plaintif merupakan satu cubaan tidak sah melalui pintu belakang untuk memperoleh tanah subjek plaintif secara paksa yang jelas bertentangan dengan KTN, Akta Pengambilan Tanah 1960 dan Perlembagaan Persekutuan (lihat perenggan 51–52).]

Cases referred to

Associated Provincial Picture Houses Ltd v Wednesbury Corp [1948] 1 KB 223, CA (refd)
Pow Hing & Anor v Registrar of Titles, Malacca [1981] 1 MLJ 155, FC (distd)
Saratogoa Sdn Bhd v Pentadbir Tanah Johor Bahru [2013] 4 MLJ 431, CA (refd)
Ting Ai Hong & Ors v Pendaftar Hakmilik Negeri Perak [2025] MLJU 196, HC (refd)

Legislation referred to

Federal Constitution art 13(1)
Land Acquisition Act 1960
National Land Code ss 97, 100, 130, 133, 380, 380(1)(a), Form 6A

Appeal from: *SEA Housing Corp Sdn Bhd v Pentadbir Pejabat Daerah Dan Tanah Petaling* [2024] MLJU 1903 (High Court, Shah Alam)

Nurul Izzah bt Abdul Mutalib (with Mohd Abdul Hakim bin Mohd Ali and Siti Radziah bt Kamarudin) (Selangor State Legal Advisor's Office) for the appellant.
Lim Kien Huat (with Bryan Ching Tze Yeow) (Lee & Lim) for the respondent.

Azimah Omar JCA:

INTRODUCTION

[1] The appeal before us is an appeal against the learned High Court judge's ('learned judge') decision allowing the respondent's originating summons

('OS') seeking for various declaratory reliefs and consequential orders in respect of the decision of Pentadbir Pejabat Daerah dan Tanah Petaling ('PTG') which had unlawfully forfeited the respondent's proprietorship over a piece of land held under HSD 154296 Lot 8914 Bandar Petaling Jaya, Daerah Petaling, Negeri Selangor.

[2] The respondent had primarily contended that the unlawfulness or invalid forfeiture of its land by the PTG were on the following basis:

(a) the PTG's own technical error and mistake in the marking, reporting, and accounting of the respondent's proper proprietorship over the subject land; and

(b) the PTG's unlawful transgression against the Land Acquisition Act 1960 in inappropriately 'acquiring' the respondent's subject land by means of unlawful forfeiture under the procedures prescribed under ss 97, 100, and 130 of the National Land Code ('the NLC').

[3] On the contrary, from the PTG's affidavits in opposing the respondent's OS, the PTG had defended its act of forfeiting the respondent's land. The PTG in its attempt to defend the lawfulness and validity of the forfeiture of the respondent's land had only raised contentions on technicalities, bare denials, and even admissions which went against the PTG's own defence:

(a) in that by procedural technicality, the respondent ought to be barred from petitioning for the annulment of the forfeiture as the PTG had fulfilled all the procedural requirements for a valid forfeiture under the NLC;

(b) in that the deponent of the respondent's affidavits 'lacked the locus standi' to represent or bring the originating summons 'in the name' of the respondent;

(c) in that the PTG outright admits to the confusing and conflicting preparation and issuance of the Instrument Document Title ('IDT'), as well as two technical reports which had led both the PTG and the respondent to mistakenly believe that the subject land owned by the respondent 'DID NOT EXIST' and that the issuance of the IDT for the subject land was a 'MISTAKE'. And thus the PTG had mistakenly advised the respondent to ignore the Statutory Notice under Form 6A of the NLC and not to accede to the 6A Notice's call for payment of rent arrears; and

(d) in that the PTG outright admission to the existence of the two conflicting technical reports which should not have been accessible to the respondent. In other words, the PTG admits that the factum of the PTG's mistake and error SHOULD HAVE BEEN ENTIRELY

CONCEALED from the respondent's knowledge. A

[4] It is pertinent to note that the PTG had very little ground, aside from its bare denials and technical contentions, to answer and explain the curious 'mistake' and 'error' in appropriately marking and recording the respondent's proprietorship over the subject land which ultimately led to the mistaken belief that the respondent's subject land somehow 'does not exist'. B

FACTUAL BACKGROUND

C

[5] The respondent (SEA Housing Corp Sdn Bhd) is the registered proprietor of one large plot of land held under Master Title No CT 11376 Lot 3330 which the respondent had acquired circa 1939. This large plot of land was then subdivided into ten individual plots of land held under separate registered grants and lot numbers (being Lots 8373, 8374, 8375, 8376, 8377, 8378, 8379, 8380, 8381, 8383, and 8474) (hereinafter the respondent will be referred as 'the plaintiff' as it were at the High Court, while the PTG being the appellant in this appeal will be referred as 'the PTG'). D

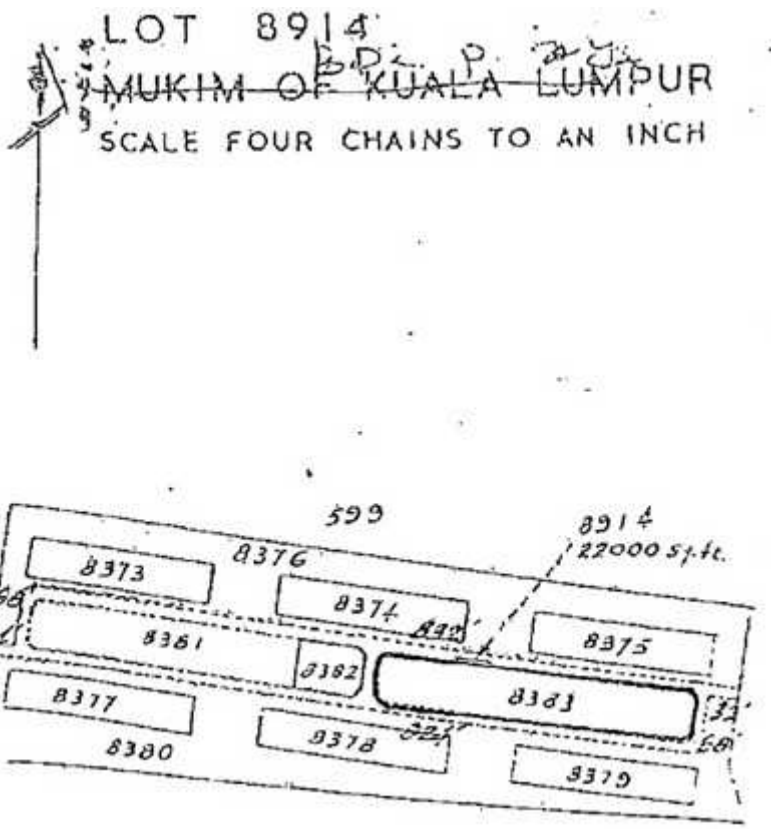
[6] Circa 1980s, the plaintiff developed and constructed the SEA Park Apartments atop six out of the ten subdivided lots. The remainder four vacant lots surrounding the SEA Park Apartments (inclusive of Lot 8383) were later sold to one Yap Say Tee. E

[7] For all intents and purposes the plaintiff has a spotless record and reputation in respect of the upkeep and due payment of all quit rents over all of its landholding especially the plots involved in and surrounding the SEA Park Apartments. F

[8] For a vast majority of time, the plaintiff was led to believe that the subdivision of the large plot of land was confined to the ten subdivided plots (in which the individual titles were issued and handed over to the plaintiff). Unbeknownst to the plaintiff, the large plot of land was in fact subdivided into 12 plots of land with the last plot of land being held under HSD 154296 Lot 8914 ('subject lot/Lot 8914/subject land'). It remains undisputed that the title to the subject lot had never been issued or handed over to the plaintiff by the PTG. G H

[9] The plaintiff only knew of the existence of the subject lot when it received the PTG's Statutory Notice for Claim for Rent Arrears dated 3 March 2016 for 'unpaid rent' of the subject lot ('6A Notice') (issued under s 97 of the NLC). Surprised by this revelation, the plaintiff promptly went to the PTG's office and on 27 April 2016, obtained a certified true copy of the title to the subject lot (as the original IDT was never handed over to the plaintiff). I

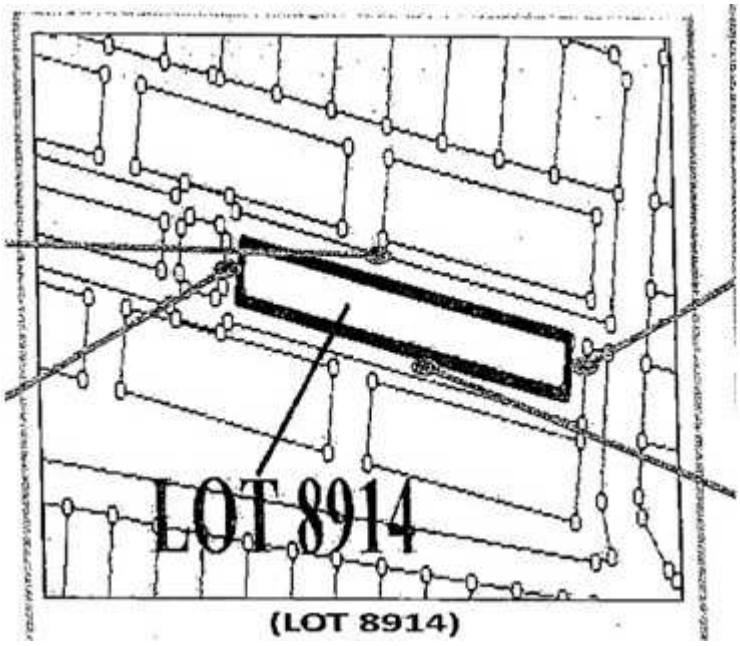
[10] The receipt of the copy of the title sparked the first bit of confusion over the subject lot. The plaintiff contended and we agree that the Pelan Tanah in the title was clearly indicative that the subject lot (in thicker bold line) was *BOTH Plot number 8383 AND Plot number 8914*:



[11] As shown in the above, the Pelan Tanah had highlighted (in thick bold line) Lot 8383 and had pointed the number '8914' towards the same exact Lot 8383 with a dashed-line arrow. Considering the arrow and the thickened bold line over Lot 8383, it is certainly reasonable to perceive the Pelan Tanah to mean that Lot 8914 is 'also' Lot 8383.

[12] It is due to this confusion that the plaintiff's representative was then referred to the PTG's Technical Division. Upon reference to the Technical Division, the PTG's officer then examined both the Pelan Tanah alongside other technical drawings of Lot 8914. One of these technical drawings included a *Borang Laporan Penolong Pegawai Tanah PTDP/SPHT 17/139/11*

(C) for Lot 8914 dated 25 July 2014 prepared by one Ridzuan bin Kambali @ Ramli (*Penolong Pegawai Tanah*) ('Subject Report'). This Subject Report further adds more legitimacy to the mistaken belief that the subject lot (8914) does not exist and was overlapping Lot 8383 when the drawing within the Subject Report outright bold and labelled the *exact same Lot 8383 to be Lot 8914 instead*:



[13] It is exactly due to this consistent 'error' by the PTG's marking and recording of the plaintiff's landholding that the PTG thereby advised the plaintiff:

(a) that the issuance of title for the subject lot 8914 was a 'mistake' as the subject lot in actuality overlapped with Lot 8383 which had already been alienated to the plaintiff (and later sold to Yap Say Tee); and

(b) to ignore the 6A Notice (and not to accede to the claim for rent arrears) as Lot 8914 supposedly 'never existed' from the outset.

[14] Considering the advice by the PTG's Technical Division, the title, and the Subject Report upon Lot 8914, it was only right for the plaintiff to ignore the 6A Notice and not accede to the claim for rent arrears for Lot 8914. To insist otherwise is verily inappropriate as there shall be neither legal nor factual reason for the PTG to insist upon the plaintiff to pay rent arrears for the exact

land that even the PTG reported to be non-existent due to the overlapping.

[15] Two years since the advice by the technical division, the plaintiff was then left shocked when circa 2018, the plaintiff discovered that the Subject Lot 8914 in actuality DOES EXIST and that the PTG had unlawfully and unbeknownst to the plaintiff forfeited the subject land on the grounds of the plaintiff's failure to comply with the 6A Notice (which the PTG itself had advised the plaintiff to ignore). This unlawful forfeiture of the plaintiff's land would not have come to light if not for Yap Say Tee's diligence in enquiring on the lands surrounding the SEA Park Apartments.

[16] We also take note of the PTG's insistence and deposition that this concealed forfeiture be kept under wraps and beyond the plaintiff's access or knowledge.

[17] To the plaintiff's dismay, it was only later discovered by Yap Say Tee that the PTG in fact had prepared an AMENDED technical report over the same subject lot 8914 ('amended Subject Report'). And 'fortuitous' to the PTG's intention to silently forfeit the plaintiff's subject land, this amended Subject Report mirrored the entirety of the initial Subject Report save and except swapping of a different Pelan Tanah ('amended pelan tanah'). Unsurprisingly, the amended pelan tanah showed an entirely different story than that of the mistaken belief that the PTG had led the plaintiff to believe:

[18] Vastly different from the Pelan Tanah in the Original Subject Report, the amended pelan tanah in the amended Subject Report:

(a) no longer isolate, highlight, or bold the borderlines of Lot 8383;

(b) no longer marked or labelled Lot 8914 atop of Lot 8383; and

(c) instead highlighted or bold altogether a separate area of land which was immediately adjacent to Lot 8383 to be Lot 8914.

[19] The above examined, it was thus obvious that unbeknownst to the plaintiff, the PTG had amended the Subject Report to now indicate a separate and individual existence of Lot 8914 (subject lot) which was entirely distinct from Lot 8383. Unbeknownst to the plaintiff, the PTG had misrepresented and misled the plaintiff to believe that the subject lot never existed and that the plaintiff had no legal obligation to comply with the 6A Notice. And since the plaintiff was misled to ignore its payment obligation as claimed under the 6A Notice, the PTG had taken the 'opportunity' to 'acquire' the plaintiff's land without due compensation paid to the plaintiff and in total transgression of the Land Acquisition Act 1960.

[20] The factum of this grave error was admitted by the author (Ridzuan bin Kambali @ Razali) of both the original Subject Report and the amended Subject Report in an additional affidavit which was filed by the PTG in

opposing the plaintiff's originating summons:

> 7. Laporan yang dikatakan sebagai Laporan 'Asal' oleh Plaintif tersebut adalah berdasarkan kepada lakaran pada Pelan B2 HSD 154296 yang dirujuk oleh Peguam Plaintif seperti di m/s 106–108 Afidavit Sokongan Plaintif. Manakala, Laporan yang dikatakan sebagai Laporan 'Terpinda' oleh Plaintif tersebut adalah berdasarkan semakan dan penelitian semula saya ke atas Pelan B2 dan Pelan daripada Jabatan Perancangan Bandar dan Desa ('JBPD') yang jelas menunjukkan Lot 8914 ialah jalan.
>
> Sesalinan Pelan daripada Jabatan Perancangan Bandar dan Desa ('JBPD') dilampirkan di sini dan ditandakan sebagai Ekshibit 'RK-2'.
>
> 8. Di atas perkara ini, dua Borang Laporan telah disediakan untuk perhatian, panduan dan rujukan saya sendiri selaku penyedia laporan. Walau bagaimanapun, hanya Laporan 'Terpinda' yang telah diguna pakai sebagai laporan yang sah untuk proses perampasan. Hasil laporan terpinda yang saya sediakan mengesahkan seperti berikut:-

[21] Nonetheless, there was never any deposition by the PTG that it had ever endeavoured to appropriately inform and alert the plaintiff of the grave error and the subsequent amendment. Instead, the PTG had outrightly deposed its intention to keep the entire error under wraps and put the blame against the plaintiff for 'accessing' the two reports without the PTG's say-so.

[22] In any case, even if there was a genuine honesty on the side of the PTG:

> 17. Perenggan 19 dan 20 Afidavit Sokongan Plaintif adalah diakui setakat kewujudan dua (2) Borang Laporan Penolong Pengawai Tanah bertarikh 25.7.2014 bagi Lot 8914 yang dilampirkan oleh Plaintif di dalam Ekshibit 'P-8' dan 'P-9'. Defendan Kedua juga menegaskan di sini bahawa Borang Laporan di dalam Ekshibit 'P-8' dan 'P-9' adalah dokumen dalaman yang sewajarnya tidak boleh diakses oleh mana-mana pihak luar. Oleh itu, Plaintif diletakkan di atas beban pembuktian yang ketat dan kukuh untuk membuktikan perenggan tersebut.

Regarding its error, *the amendment should have been made clear and be reflected upon the title itself.* Both the reports were prepared in the year 2014. However, when the respondent obtained a certified true copy of the title on *27 April 2016*, the Pelan Tanah was still consistent with the admitted error and mistake caused by the PTG (in that it still highlighted, isolated, and bold the borderlines of Lot 8383 to also be Lot 8914). Thus, it certainly reflected poorly upon the PTG's intentions when the PTG had not amended the title to reflect the amendment despite the PTG's prior awareness of its REPORTED error and mistake.

[23] Naturally, the plaintiff submitted a petition under s 133 of the NLC in hopes to annul the unlawful forfeiture of the subject land circa December 2018

('annulment petition'). Months passed and the PTG was reluctant to exercise its statutory duty to hear the annulment petition.

[24] On 7 March 2019, the PTG meted out a decision to refuse to hear the annulment petition on the grounds that the annulment petition was filed 'out of time' (delay of which was directly caused by the PTG's own advice to the plaintiff to ignore the 6A Notice).

[25] Thus, the plaintiff has no alternative but to initiate originating summons No BA-24NCVC-722–05 of 2019 ('OS 722') to impugn the PTG's unjust refusal to hear the plaintiff's annulment petition. A year later on 14 May 2020, the High Court had allowed OS 722 and directed the PTG to re-hear the annulment petition ('OS 722 Order').

[26] Despite the OS 722 Order, the PTG took an inexplicable delay of 911 days since the OS 722 Order to finally mete out a decision on 10 November 2021 to perplexingly dismiss the annulment petition *on the account that Lot 8914 had been forfeited and was thereafter reserved for public purposes (public road)*. Thus, at this juncture, the PTG had grossly sidestepped the entirety of the Land Acquisition Act 1960 and wrongfully 'acquired' the plaintiff's Lot 8914 by backdoor methodology of an unlawful forfeiture to deprive the plaintiff of its rightful proprietorship and deny them of the rightful compensation for the loss of its land by backdoor compulsory acquisition.

[27] Faced with such a situation, the plaintiff had no other options but to seek the redress of the court by filing the OS to impugn the PTG's decision as well as to impugn the validity of the PTG's forfeiture of the plaintiff's Lot 8914.

[28] After the exhaustion of a plethora of affidavits and written submissions by parties, the learned judge had allowed the plaintiff's originating summon on 18 April 2023. Dissatisfied by the learned judge's decision, the PTG filed the present appeal before us against the entirety of the learned judge's decision.

THE HIGH COURT'S DECISION

[29] Upon close scrutiny of the learned judge's grounds of judgment, we found that the learned judge's decision had appropriately appreciated the material facts and the prevailing law (although we have to remark that the parties, especially the PTG had unnecessarily veered the discourse of litigation too far into the realm of technicality and away from the glaring injustice gleaning from the PTG's admitted errors and unjust forfeiture of the plaintiff's Lot 8914. This was mainly due to the PTG's misconceived reliance upon the decision in *Pow Hing & Anor v Registrar of Titles, Malacca* [1981] 1 MLJ 155 in

which the PTG attempted to prove due compliance of all the procedures (proper service of the 6A Notice) for a lawful forfeiture of the plaintiff's subject land.

[30] Succinctly the learned judge had cited the following grounds in allowing the plaintiff's OS:

(a) the PTG had failed to properly comply with the mandatory statutory requirement to properly serve the 6A Notice to the plaintiff itself (and had wrongly served the 6A Notice to United SEA Housing Ban Lee instead (which was a totally separate and distinct corporate entity than that of the plaintiff);

(b) the plaintiff's non-compliance to the 6A Notice was instigated by the PTG's own wrongful advice that the plaintiff can just ignore the 6A Notice and that no quit rent was in arrears as Lot 8914 supposedly does not exist;

(c) the fact that the plaintiff was referred to and advised by the PTG's technical division (and not the PTG's *Unit Hasil*) does nothing to negate the PTG's glaring mistake and error in wrongfully advising the plaintiff that the subject land never existed and that the 6A Notice can be ignored. The plaintiff should not be blamed for relying on the information and advice presented by the PTG's Technical Division;

(d) the PTG had outrightly admitted to the truth and existence of the two contradictory reports (Subject Report and amended Subject Report). Thus, the PTG had also inadvertently admitted to the confusion caused by the PTG's inconsistent reporting and marking. Consequently, it is only reasonable and justifiable that the plaintiff was led to the mistaken belief that Lot 8914 did not exist on the count of its overlap with Lot 8383; and

(e) considering the PTG's clear declaration that the plaintiff's Lot 8914 had in fact been forfeited for 'public purposes', the PTG had outrightly admitted to contravening the Land Acquisition Act 1960 as the PTG cannot abuse the procedure for forfeiture to 'compulsorily acquire' Lot 8914 for a public purpose (and without paying due compensation to the plaintiff). Such deliberate disregard of special laws for land acquisitions was a clear deprivation of the plaintiff's fundamental rights to property entrenched under art 13(1) of the Federal Constitution.

THE APPEAL BEFORE US

[31] We have perused the memorandum of appeal, the High Court's grounds of judgment, the records of appeal and the parties' respective written submissions and we are of the view that the appeal before us can be decided by

determining the following singular ISSUE namely:

> whether the learned judge was correct to find that the entirety of the PTG's exercise to forfeit the plaintiff's subject land was an unlawful backdoor attempt to compulsorily acquire the plaintiff's subject land in clear contravention of the NLC, the Land Acquisition Act 1960 and the Federal Constitution.

ISSUE: WHETHER THE LEARNED JUDGE WAS CORRECT TO FIND THAT THE ENTIRETY OF THE PTG'S EXERCISE TO FORFEIT THE PLAINTIFF'S subject land WAS AN UNLAWFUL BACKDOOR ATTEMPT TO COMPULSORILY ACQUIRE THE PLAINTIFF'S subject land IN CLEAR CONTRAVENTION OF THE NLC, THE LAND ACQUISITION ACT 1960 AND THE FEDERAL CONSTITUTION

[32] By and large our sentiment had already been made clear in our appreciation of the material facts above. Succinctly, we are in full agreement with the learned judge's decision, albeit slightly less on the aspect of procedural technicality, but more on the larger and glaring aspect of the injustice of the PTG's conducts and omissions which directly led to the unfair forfeiture of the plaintiff subject land.

[33] As we have expressed above, the crux of the submissions (and ultimately the learned judge's grounds of judgment) had taken a tone of technicality and procedural propriety instead of directly addressing the unjust conduct of the PTG prior and post the forfeiture of the plaintiff's subject land. This was largely due to the PTG's desperate attempt to frustrate the plaintiff's call for justice by raising strict and rigid compliance with the rule of procedure as means to stifle the plaintiff's OS by way of technicality.

[34] The PTG's procedural and technical contention was plainly that the PTG had lawfully served the 6A Notice to the plaintiff, and the plaintiff had failed to accede to the claim for rent arrears within the specified time stipulated under the 6A Notice. And since the plaintiff had not paid the rent arrears within the stipulated time, the plaintiff was thereby out of time to impugn the validity of the forfeiture.

[35] Understandably, since the PTG had taken a procedural angle of defence, the plaintiff had to pivot into a procedural angle of submission to answer to the PTG's submission.

[36] However, beyond the rigidity and mechanistic nature of these procedural contentions, the PTG had very little submission or justification to address its own admissions of error and mistake in appropriately marking and recording the respondent's proprietorship over Lot 8914 (despite the PTG's admission of prior knowledge and awareness of its error and mistake).

[37] The fact of the matter is, the rule in *Pow Hing* does not necessarily apply in the case before us as the facts in this case goes beyond mere questions as to procedural compliance as to the service requirements of the statutory notices involved in a forfeiture. Even if we were to find that the PTG had duly complied with all of the procedural requirements to appropriately serve the 6A Notice to the plaintiff, the proper service of the 6A Notice does nothing to negate the PTG's admitted errors and mistake as well as misrepresentation as to the alleged non-existence of Lot 8914.

[38] It would be gravely unjust of us to strictly enforce the time stipulated under the 6A Notice when the PTG itself had advised against the very existence of Lot 8914 itself, what more the 'arrears' claimed under the 6A Notice. Thus, in actuality the merit of this case first hung on the substantive issue of the PTG's admitted mistake and error well before any procedural issue even become remotely relevant.

[39] It had long been acknowledged that the forfeiture of landholding is a serious quasi-criminal matter as it can adversely affect one's fundamental right to property entrenched under art 13(1) of the Federal Constitution. It is such a serious matter to the extent that mere procedural compliance with the procedures for forfeiture *IS NOT AUTOMATICALLY SUFFICIENT* to justify a forfeiture of one's landholding. It is equally axiomatic that the exercise of such serious quasi-criminal statutory power must not only be procedurally proper but *ALSO IN LINE WITH CONSTITUTIONAL SAFEGUARDS* and must be *REASONABLY EXERCISED*. We need only refer to the salutary words of Hamid Sultan JCA (as His Lordship then was) in the Court of Appeal case of *Saratogoa Sdn Bhd v Pentadbir Tanah Johor Bahru* [2013] 4 MLJ 431:

> [10] We have read the appeal record and submission of the parties in detail. We are grateful to the comprehensive submission of both learned counsel. We do not wish to repeat the same save to deal with the core issues. After having given much consideration to the submission of learned federal counsel, we take the view that the appeal must be allowed. Our reasons, inter alia, are as follows:
>
> (a) *it is trite that provision for forfeiture is quasi criminal in nature and court will frown at the decision to forfeit if procedural safeguards and compliance are not adhered to in the strict sense*. When it relates to landed property, *constitutional safeguards must be strictly complied with* (see art 13 of the Federal Constitution; *Kekatong Sdn Bhd v Danaharta Urus Sdn Bhd* [2003] 3 MLJ 1);
>
> (b) *in the instant case, it is not in dispute that the respondent has complied with ss 97, 100 and 130 of the NLC. That itself is not sufficient when the plaintiff is wound up*. It is necessary to comply with the provision of s 226(3) of the CA 1965 failing which it *will offend the fundamental guarantee afforded in the Federal Constitution in particular art 13(1) which reads as follows:*
>
> 13 Rights to property.

(1) No person shall be deprived of property save in accordance with law.

(c) *it is well settled that every exercise of statutory power must not only be in conformity with the express words of the statute in this case*, ss 97, 100 and 130 of the NLC, but above all must also comply with certain express and/or implied legal requirements and in the instant case, s 226(3) of the CA 1965 *and must pass the acid test of reasonableness* (see *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223; *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35). (Emphasis added.)

[40] Considering the precedent above, it is resoundingly clear that the mere raising of strict procedural compliance with the provisions for forfeiture cannot automatically allay the plaintiff's call for justice and protection of its constitutional right to property. It was also incumbent upon the PTG to prove that the exercise of its authority to forfeit the subject land had been reasonably exercised. Applying this rule of law, it is irrefutable that the PTG would fail in both fronts of safeguarding the plaintiff's constitutional rights, and the *Wednesbury* reasonableness test:

(a) as against the test of *Wednesbury* reasonableness, we find that no reasonable person, having admitted to mistakenly recorded the plaintiff's landholding within the title (and mistakenly advised the plaintiff to ignore the 6A Notice), would still insist on blaming the plaintiff's non-payment against the 6A Notice as grounds to unjustly forfeit the plaintiff's subject land; and

(b) as against the plaintiff's constitutional right to hold property, we find that the unreasonable manner in which the PTG had misled the plaintiff to mistakenly believe that Lot 8914 was non-existent, and to ignore the 6A Notice had directly deprived the plaintiff of the opportunity to safeguard its landholding and comply with its payment obligations. Thus, having deprived of such opportunity would consequently deprive the plaintiff of its ownership over Lot 8914.

[41] From the outset, we are beckoned to address the PTG's allegations that the plaintiff already had prior knowledge of its proprietorship and still feigned ignorance against the 6A Notice and its payment obligations. On the contrary, the surrounding facts of this case was more indicative of the plaintiff's genuine mistaken belief of Lot 8914's 'non-existence' owing to the confusing Pelan Tanah in the certified copy of the title and the PTG's Subject Report. As had been highlighted by the learned judge and the plaintiff, the plaintiff as a developer over many decades had a spotless record in meeting all of its payment obligations for all of the lands surrounding the SEA Park Apartments.

[42] There was no evidence proffered by the PTG that the plaintiff was in the habit of defaulting any of its payment obligations (save and except against the 6A Notice). Thus, it is infinitely more probable than not that the plaintiff would have paid all quit rent (or even rent arrears) had the plaintiff been advised by the PTG that Lot 8914 indeed did exist and that the plaintiff must pay the rent arrears so as to avoid the forfeiture of the subject land.

[43] We thus find that the learned judge was correct to find that it was more probable than not that the plaintiff was genuinely unaware of the existence of Lot 8914 and had only ignored the 6A Notice upon the PTG's representation that Lot 8914 was non-existent on the account of an overlap with lot 8383.

[44] We reiterate that the PTG had never bothered to appropriately amend the Pelan Tanah within the title for the subject lot to reflect the amendment or the correction made prior in 2014. Had the Pelan Tanah in the title be amended or the correction be endorsed upon the title itself, the entire confusion as to the existence of the subject lot would have never arisen as there would not have been any room to miscomprehend Lot 8914 to be overlapping Lot 8383.

[45] But alas, this was the exact amendment or endorsement upon the title that the PTG had continuously failed or refused to undertake (despite its outright admission of awareness of its mistake circa 2014). This is especially glaring considering the fact that the registrar of the PTG has the statutory duty to make corrections upon any error of 'misdescription of land or boundaries' under s 380(1)(a) of the NLC:

> 380 Correction of errors in documents of title, etc.
>
> (1) *Where the Registrar is satisfied —*
>
> (a) *that any document of title has been registered or issued in the wrong name, or contains any misdescription of land or boundaries, or other error or omission*, *or*
>
> (b) that any memorial or other entry has been made in error on any document of title or other instrument relating to land, or
>
> (c) that any memorial or other entry made on any such document of title or instrument itself contains any error or omission,
>
> *he may*, subject to sub-sections (2) and (3), *make such correction on the document or interest in question as may be appropriate* in the circumstances of the case.

[46] It was very recently restated that the PTG's duty under s 380 of the NLC shall hold the registrar of the PTG to be liable to ensure that errors upon titles are appropriately rectified or corrected (see *Ting Ai Hong & Ors v Pendaftar Hakmilik Negeri Perak* [2025] MLJU 196):

> [7] The defendant's preliminary objection is unfounded as the *registrar's role is central to the erroneous registration of the titles*. In *Lim Poh Chuen*, this court held that the registrar (Pendaftar Hakmilik Negeri Perak), being the entity responsible for implementing title registrations, remains liable for ensuring compliance with statutory provisions under the National Land Code. *This includes the power to rectify errors under s 380 of NLC*. The defendant cannot absolve themselves by attributing the decision solely to the State Authority (PBN). (Emphasis added.)

[47] Therefore, since the PTG had failed to appropriately carry out its duty to amend the Pelan Tanah within the title to Lot 8914, then the plaintiff ought not be held at fault for reasonably relying on the PTG's error and subsequent misrepresentation and erroneous advice to ignore the 6A Notice. The PTG was aware of the error and yet opted to not correct the known error. Worst still, the PTG was hopeful that the error be kept under wraps and the plaintiff be kept unaware of the error until time would 'allow' the subsequent forfeiture of the subject lot for 'public purpose' (and without paying compensation to the plaintiff).

[48] The PTG's myriad of *afidavit jawapan* did not materially deny (aside from a general and baseless denial) the factum of the meeting between the plaintiff and the PTG's technical division as well as the authenticity of the two technical reports that were indeed prepared by the plaintiff.

[49] At best the PTG's retort to the two contradictory reports was to contend that the PTG's technical division was somehow 'irrelevant' and that the plaintiff was 'not supposed' to be able to access the reports. Assertions which would actually run afoul against the PTG's case as it was clearly indicative of the PTG's active concealment of the truth as reported in the plaintiff 's own reports. Questioning the manner and method that the plaintiff managed to obtain the reports does nothing to negate the relevancy of the two reports to shine much needed light into the PTG's mismanagement and 'acquisition' of Lot 8914 by backdoor means (by entirely eschewing due compliance of the Land Acquisition Act 1960).

[50] Notwithstanding the true and actual intent behind the PTG's conduct prior and post the forfeiture, it still remains gravely unjust for the PTG to dismiss the annulment petition on the grounds that the subject land now had been reserved to be used for 'public purpose'.

[51] As far as the law is concerned, the only manner in which the government may acquire already-alienated land for public purpose is via compulsory acquisition. The realm of compulsory acquisition is specifically governed by the Land Acquisition Act 1960. Regardless of the PTG's true intent, the irrefutable fact remains that the PTG cannot 'ride' on the PTG's

mistake and error leading to the forfeiture of the subject land as backdoor means to acquire Lot 8914 for public purposes.

[52] In view of all of the above deliberation under this heading, we accordingly answer the *issue in the POSITIVE*. The learned judge was certainly correct to find that the entirety of the PTG's exercise to forfeit the plaintiff's subject land was an unlawful backdoor attempt to compulsorily acquire the plaintiff's subject land in clear contravention of the NLC, the Land Acquisition Act 1960 and the Federal Constitution.

OUR DECISION

[53] All of the above deliberations considered, we find that there is no merit in the present appeal. Hence, we hereby dismiss the PTG's appeal. The learned judge's decision to allow the plaintiff's OS is hereby upheld and maintained.

[54] Lastly, we also order costs of RM25,000 to be paid by the PTG-appellant to the plaintiff-respondent

Appeal dismissed.

Reported by K Selvaraju